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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,638	08/05/2003	Xuewen Zhu	108-141USANA0	7197

7590 02/24/2005
Thomas J. Perkowski, Esq., P.C.
Soundview Plaza
1266 East Main Street
Stamford, CT 06902

EXAMINER

LE, THIEN MINH

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

CT

Office Action Summary	Application No.	Applicant(s)	
	10/634,638	ZHU ET AL.	
	Examiner	Art Unit	
	Thien M. Le	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 and 56-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-31 and 56-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The preliminary amendment filed on 3/8/2004 and 8/5/2003 have been entered. The information disclosure statement filed on 11/3/2003 has been entered. Claims 1-20, 33-55 have been canceled. Claims 21-34, and 56-75 are presented for examination.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21- are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,619,549 [herein after referred as the '549 patent). Although the conflicting claims are not identical, they are not patentably distinct from each other because essentially recites the same limitations.

Claim 21 is rejected in view of claim 1 of the '549 patent. Similar to claim 21, claim 1 of the '549 patent recites:

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1. A bar code symbol reading device comprising:

a bar code symbol reading engine for reading bar code symbols affixed to objects proximate to said bar code symbol reading engine and producing symbol character data representative of such bar code symbols; and

a data transmission subsystem, operably coupled to said bar code reading engine, for communicating said symbol character data to a communication interface of a host system over a communication link therebetween;

wherein said data transmission subsystem implements a plurality of different communication interfaces, and wherein, during an interface configuration mode of operation, said data transmission subsystem automatically cycles through at least one of said plurality of different communication interfaces, whereby, for a given communication interface, said data transmission subsystem selectively activates the given communication interface while disabling the other communication interfaces and tests the communication link between the given communication interface and the host system to ascertain if the given communication interface corresponds to the communication interface of the host system.

Though claim 1 of the patent recites the whole bar code reading system, claim 21 of the instant applicant recites the data transmission subsystem which is embraced by the limitations set forth in claim 1 of the '549 patent.

As can be seen, the patent protections have been granted to the earlier filed application.

Claim 22 is rejected in view of claim 2 of the '549 patent in that they both recite: "wherein said interface configuration mode of operation is carried out when the device is initially powered up".

Claim 23 is rejected in view of claim 3 of the '549 patent in that they both recite: "wherein, in said interface configuration mode of operation, upon detecting that said given communication interface corresponds to the communication interface of the host system, the interface configuration mode of operation ends, thereby enabling

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subsequent data communication between said bar code symbol reading device and the host system over the given communication interface”.

Claim 24 is rejected in view of claim 4 of the '549 patent in that they both recite:” wherein said host system is selected from the group comprising: an electronic cash register system, a data collection device, and a data storage and/or processing device”.

Claim 25 is rejected in view of claim 5 of the '549 patent in that they both recites: “wherein at least one communication interface implemented by said data transmission system and the communication interface of the host system provides a wireless data link between the device and the host system”.

Claim 26 is rejected in view of claim 6 of the '549 patent in that they both recite:” wherein said wireless data link is selected from the group comprising: an infra-red link, a Bluetooth RF link, and an IEEE 802.11b RF link”.

Claim 27 is rejected in view of claim 7 of the '549 patent in that they both recite: “wherein at least one communication interface implemented by said data transmission system and the communication interface of the host system provides a wired serial data link between the device and the host system”.

Claim 28 is rejected in view of claim 8 of the '549 patent in that they both recite: “wherein said wired serial data link is selected from the group comprising: a keyboard wedge link, an RS-232 link, USB link, an IEEE 1394 link, an RS-422 link, and a RS-485 link”.

Claim 29 is rejected in view of claim 9 of the '549 patent in that they both recite: "wherein at least one communication interface implemented by said data transmission system and the communication interface of the host system provides a wired parallel data bus".

Claim 30 is rejected in view of claim 10 of the '549 patent in that they both recite: "wherein at least one communication interface implemented by the data transmission system of the device and the communication interface of the host system provides a wired communication link selected from the group comprising: an OCIA link, an IBM 46XX link, a Light Pen Emulation link, and a LTPN link".

Claim 31 is rejected in view of claim 14 of the '549 patent in that they both recite: "wherein said data transmission subsystem maintains a status register that stores information related to the establishment of a communication link between said data transmission subsystem and the host system over a specific interface implemented by said data transmission subsystem, and wherein, in the interface configuration mode of operation, said data transmission subsystem reads said information stored in said status register to ascertain if the given communication interface corresponds to the communication interface of the host system".

Claims 56-58 are rejected in view of claims 1-3 of the '549 patent respectively. Though the claim languages are not identical, they essentially recite the same limitations.

Claim 59 is rejected in view of claim 4 of the '549 patent. The examiner considers the "electronic cash register system" to be a POS system.

Claim 60 is rejected in view of claim 5 of the '549 patent.

Claim 61 is rejected in view of claim 6 of the '549 patent.

Claim 62 is rejected in view of claim 7 of the '549 patent.

Claim 63 is rejected in view of claim 8 of the '549 patent.

Claim 64 is rejected in view of claim 9 of the '549 patent.

Claim 65 is rejected in view of claim 10 of the '549 patent.

Claim 66 is rejected in view of claim 11 of the '549 patent.

Claim 67 is rejected in view of claim 12 of the '549 patent.

Claim 68 is rejected in view of claim 13 of the '549 patent.

Claim 69 is rejected in view of claim 14 of the '549 patent.

Claim 70 is rejected in view of claim 15 of the '549 patent.

Claim 71 is rejected in view of claim 16 of the '549 patent.

Claim 72 is rejected in view of claim 17 of the '549 patent.

Claim 73 is rejected in view of claim 18 of the '549 patent.

Claim 74 is rejected in view of claim 19 of the '549 patent.

Claim 75 is rejected in view of claim 20 of the '549 patent.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thien M. Le whose telephone number is (571) 272-2396. The examiner can normally be reached on Monday - Friday from 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Le, Thien Minh
Primary Examiner
Art Unit 2876
February 18, 2005**